United States District Court Southern District of Texas

## **ENTERED**

June 05, 2017 David J. Bradley, Clerk

## IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF TEXAS HOUSTON DIVISION

	§	
ALIGN TECHNOLOGY, INC.,	§	
	§	
Plaintiff,	§	
	§	
<b>v.</b>	§	CASE NO. 4:11-CV-00695
	§	
CLEARCORRECT, INC.,	§	
CLEARCORRECT OPERATING, LLC,	§	
and CLEARCORRECT HOLDINGS, LLC,	§	
	§	
Defendants.	§	

## ORDER

Pending before the Court is Defendant ClearCorrect's Motion for Summary Judgment. (Instrument No. 153). ClearCorrect claims that Align must be equitably estopped from asserting infringement because ClearCorrect voluntarily dismissed a prior lawsuit. However, ClearCorrect admits that Align never made any statement that would lead an alleged infringer to reasonably infer that Align would not assert its patent rights in the future. Moreover, when a party asserts equitable estoppel by silence alone, "mere silence must be accompanied by some *other* factor which indicates that the silence was sufficiently misleading as to amount to bad faith." *Hemstreet v. Comput. Entry Sys. Corp.*, 972 F.2d 1290, 1295 (Fed. Cir. 1992). Here, there is no evidence that Align acted in bad faith by asserting its patent rights two years after ClearCorrect voluntarily dismissed its lawsuit.

IT IS HEREBY ORDERED that Defendants' Motion for Summary Judgment is DENIED. (Instrument No. 153).

## Case 4:11-cv-00695 Document 162 Filed in TXSD on 06/02/17 Page 2 of 2

The Clerk shall enter this Order and provide a copy to all parties.

SIGNED on this the  $\frac{200}{200}$  day of June, 2017.

VANESSA D. GILMORE UNITED STATES DISTRICT JUDGE